Tracy, California

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TRIPLE E PRODUCE CORP., Respondent, and UNITED FARM WORKERS OF AMERICA, AFL-CIO, Charging Party.	)	Case No. 78-CE-10-S 5 ALRB No. 65

DECISION AND ORDER

Upon charges duly filed by the United Farm Workers of America, AFL-CIO (UFWJ, alleging a violation of California Labor Code Section 1153 (e) and (a)[1/] by Triple E Produce Corp. (Respondent), the General Counsel of the Agricultural Labor Relations Board issued a complaint against Respondent on September 5, 1978, and duly served it on all parties.

In accordance with 8 Cal. Admin. Code Section 20260, this proceeding has been transferred directly to the Board on the basis of a stipulation of facts which waived an evidentiary hearing before an Administrative Law Officer.

Pursuant to the provisions of Section 1146, the Agricultural Labor Relations Board has delegated its authority in this matter to a three-member panel.

FINDINGS OF FACT

Respondent is, and at all times material herein has been

[1/]All statutory references herein are to the California Labor Code unless otherwise noted.

an agricultural employer within the meaning of Section 1140.4(c). The UPW is, and at all times material herein has been, a labor organization within the meaning of Section 1140.4 (f).

On April 13, 1978, the UFW was certified as the exclusive collective bargaining representative of all of Respondent's agricultural employees in the State of California. Triple E Produce Corp., 4 ALRB No. 20 (1978). Thereafter, the UFW requested that Respondent commence collective bargaining negotiations. Respondent refused to bargain with the union in order to obtain judicial review of the certification issued. In its answer to the complaint, Respondent admits it has refused to bargain, but denied that its refusal constitutes a violation of Section 1153 (e) and (a). Respondent contends that the certification was not proper because certain of its post-election objections were dismissed by the Board without a hearing,[2/] and because the Board erred in not reversing the Investigative Hearing Examiner's dismissal of the two remaining objections.

CONCLUSIONS OF LAW

An investigative hearing is required for a post-election objection only when the objecting party has shown a prima facie case, which would warrant setting aside the election if uncontroverted or unexplained. Radovich v. Agricultural Labor Relations Board, 77 Cal. App. 3d 36, 140 Cal. Rptr. 24 (1977); see 8 Cal. Admin. Code Section 20365(e)(1976), reenacted as

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[2/]Respondent has requested that the declarations in support of these objections be made part of the record on review. These declarations are, in fact, included in the record on review.

Section 20365 (c)(1978). The declarations submitted in support of Respondent's objections which were dismissed by the Executive Secretary did not establish the required prima facie case. Respondent's Request for Review of that dismissal and its Motion for Reconsideration thereof were denied by this Board. We adhere to the National Labor Relations Board's proscription of relitigating representation issues in subsequent related unfair labor practice proceedings when no newly discovered or previously unavailable evidence is presented and there is no claim of extraordinary circumstances. Julius Goldman's Egg City, 5 ALRB No. 8 (1979). As Respondent has not presented newly discovered or previously unavailable evidence and has claimed no extraordinary circumstances with respect to the said objections, it is not warranted to reconsider those issues in this proceeding.

Similarly, without presenting newly discovered or previously unavailable evidence or claiming extraordinary circumstances, Respondent urges us to reverse the Investigative Hearing Examiner's recommended dismissal of the two post-election objections which were litigated in a post-election hearing. As we adopted the Investigative Hearing Examiner's recommendation and dismissed those objections in our Decision of April 13, 1978, Triple E Produce Corp., 4 ALRB No. 20, the issues in that hearing will not be relitigated herein.

Respondent's refusal to bargain is an unfair labor practice within the meaning of Section 1153 (e) and (a). Accordingly, we shall order Respondent to make whole its employees for any losses of pay and other economic losses which they have

incurred as a result of Respondent's refusal to bargain from June 28, 1978, until it begins to bargain in good faith to a contract or a bona fide impasse. Superior Farming Company, Inc., 4 ALRB No. 44 (1978); High and Mighty Farms, 4 ALRB No. 51 (1978).

ORDER

By authority of Section 1160.3 of the Agricultural Labor Relations Act-(Act), the Agricultural Labor Relations Board hereby orders that Respondent, Triple E Produce Corp., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Failing or refusing to meet and bargain collectively in good faith, as defined in Section 1155.2(a) of the Act, with the United Farm Workers of America, AFL-CIO, as the certified exclusive collective bargaining representative of its agricultural employees.

(b) In any other manner interfering with, restraining or coercing agricultural employees in the exercise of the rights guaranteed to them by Section 1152.

2. Take the following affirmative actions which are deemed necessary to effectuate the policies of the Act:

(a) Upon request, meet and bargain collectively in good faith with the UFW as the certified exclusive collective bargaining representative of its agricultural employees and, if an agreement is reached, embody the terms thereof in a signed contract.

(b). Make whole its agricultural employees for all losses of pay and other economic losses sustained by them as the result of Respondent's refusal to bargain from June 28, 1978, the

date it rejected the UFW's request for bargaining, to the date on which Respondent commences to bargain collectively in good faith and thereafter bargains to a contract or a bona fide impasse.

(c) Preserve, and upon request, make available to the Board or its agents, for examination and copying, all records and reports relevant and necessary to a determination of the amounts due its employees under the terms of this Order.

(d) Sign the Notice to Employees attached hereto. Upon its translation by a Board agent into appropriate languages, Respondent shall thereafter reproduce sufficient copies in each language for the purposes set forth hereinafter.

(e) Post copies of the attached Notice at conspicuous places on its property for 60 consecutive days, the times and places of posting to be determined by the Regional Director. Respondent shall exercise due care to replace any copy or copies of the Notice which may be altered, defaced, covered or removed.

(f) Provide a copy of the attached Notice to each employee hired by Respondent during the 12-month period following the issuance of this Decision and Order.

(g) Mail copies of the attached Notice in all appropriate languages, within 30 days after issuance of this Order, to all employees employed by Respondent from the date on which it refused to bargain until compliance with this Order.

(h) Arrange for a representative of Respondent or a Board agent to distribute and read the attached Notice in appropriate languages to the assembled employees of Respondent on

company time. The reading or readings shall be at such times and places as are specified by the Regional Director. Following the reading, the Board agent shall be given the opportunity, outside the presence of supervisors and management, to answer any questions employees may have concerning the Notice or their rights under the Act. The Regional Director shall determine a reasonable rate of compensation to be paid by Respondent to all nonhourly wage employees to compensate them for time lost at this reading and the question-and-answer period.

(i) Notify the Regional Director in writing, within 30 days after the date of the issuance of this Order, what steps have been taken to comply with it. Upon request of the Regional Director, Respondent shall notify him or her periodically thereafter in writing what further steps have been taken in compliance with this Order.

IT IS FURTHER ORDERED that the certification of the United Farm Workers of America, AFL-CIO, as the exclusive collective bargaining representative of Respondent's agricultural employees be, and it hereby is, extended for a period of one year from the date on which Respondent commences to bargain in good faith with said union.

Dated: November 1, 1979

GERALD A. BROWN, Chairman

RONALD L. RUIZ, Member

HERBERT A. PERRY, Member

NOTICE TO EMPLOYEES

The Agricultural Labor Relations Board has found that we have violated the Agricultural Labor Relations Act by refusing to bargain collectively with the UFW. The Board has ordered us to post this Notice and to take certain additional actions. We will do what the Board has ordered, and also tell you that:

The Agricultural Labor Relations Act is a law that gives farm workers these rights:

1. To organize themselves;

2. To form, join or help any union;

3. To bargain as a group and to choose anyone they want to speak for them;

4. To act together with other workers to try to get a contract or to help or protect each other; and

5. To decide not to do any of these things.

Because this is true, we promise you that:

WE WILL, on request, meet and bargain in good faith with the UFW about a contract because it is the representative chosen by our employees.

WE WILL reimburse each of the employees employed by us on or after June 28, 1978, when we refused to bargain with the UFW, for any money which they may have lost as a result of the refusal to bargain.

Dated: TRIPLE E PRODUCE CORP.

By: _____
Representative Title

This is an official Notice of the Agricultural Labor Relations Board, an agency of the State of California.

DO NOT REMOVE OR MUTILATE.

CASE SUMMARY

Triple E Produce Corp. (UFW) 5 ALRB No. 65
Case No. 78-CE-10-S

BOARD DECISION

The parties waived an evidentiary hearing before an Administrative Law Officer and submitted the case directly to the Board on the basis of a stipulation of facts. The Board concluded that Respondent violated Section 1153(e) and (a) by refusing to bargain in good faith with the certified collective bargaining representative of its agricultural employees. The Board rejected Respondent's contention that the Board improperly certified the union and held that Respondent could not raise that issue in this unfair labor practice proceeding because it had been previously litigated in a post-election hearing on objections before the Board (Case No. 4 ALRB No. 20 (1978)), and Respondent neither offered newly discovered evidence nor claimed extraordinary circumstances.

REMEDY

Respondent was ordered to meet and bargain in good faith with the union and to make whole its employees for any economic losses sustained by them as a result of Respondent's refusal to bargain.

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